

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF NEW YORK

P.O. BOX 7365

100 SOUTH CLINTON STREET

SYRACUSE, NEW YORK 13261-7365

TEL: 315-234-8590

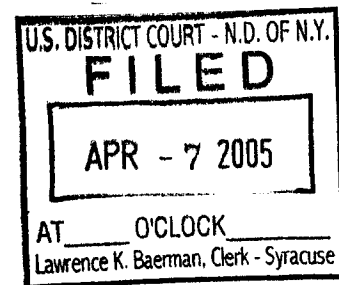
CHAMBERS OF  
NEAL P. McCURN  
SENIOR JUDGE

**Via e-filing and FAX**

Barry M. Schreiber, Esq.  
Cazenovia Business Center  
132 ½ Albany Street  
Cazenovia, New York 13035

Alan Peterman, Esq.  
Hiscock & Barclay, LLP  
Financial Plaza  
221 South Warren Street  
Post Office Box 4878  
Syracuse, New York 13221-4878

Edward R. Conan, Esq.  
Bond, Schoeneck & King, PLLC  
One Lincoln Center  
Syracuse, New York 13202-1355



Re: Andabaker v. Town of Manlius, et al., 04-CV-0892

Dear Counsel:

The court is in receipt of Mr. Schreiber's April 5, 2005 letter. The court declines to consider the affidavit of Mr. Novek primarily because it contains factual matters which are beyond the scope of defendants' Rule 12(b)(6) motion. As an aside, the court observes that in its current form Mr. Novek's affidavit contains legal conclusions which the court could not consider in any event. See Askamit v. 772 Park Avenue Corp., No. 00 CV 5520, 2003 WL 22283813, at \*5 (S.D.N.Y. Oct. 2, 2003).

As to Mr. Peterman's affidavit, the court also will disregard the same to the extent it contains facts which are beyond the scope of this Rule 12(b)(6) motion and/or legal conclusions.

Sincerely,

A handwritten signature in black ink that reads "Neal P. McCurn".

Neal P. McCurn,  
Senior U.S. District Court Judge